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Criminal Law - Bill of Particulars

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Michigan tax was on imported inventories held for sale rather than for use as in the instant case.[15]

It is submitted that there is no just basis for allowing immunity to inventories for sale and denying it to those for manufacturing uses. The imported inventories are as essential to "current operational needs" in the one case as they are in the other. Imports for sale are as much "used to supply" needed inventories and therefore "put to the use for which imported" as are those for manufacturing purposes. In effect the "current operational needs" test is discriminating against the manufacturer in favor of the seller. As was pointed out by one of the dissenting Justices in *Youngstown*[16] there is even less reason for denying the immunity to goods imported for manufacture as the state retains the right to tax the manufactured product. It becomes apparent, therefore, that the cases, by sanctioning immunity to imports for sale and by denying it to those for manufacture, have created an unjust dichotomy. The instant case, although correctly invoking the *Youngstown* rule, works unmerited prejudice against the taxpayer merely because he chooses to use a product to effectuate a later sale rather than to sell initially.

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CRIMINAL LAW — BILL OF PARTICULARS

A person charged with a criminal offense has a constitutional right to be fully informed of the nature and cause of the accusation against him.[1] To secure this right the district attorney may be required to furnish a bill of particulars to the defendant, supplying him with the necessary information.[2] Whether the district attorney must furnish the bill of particulars rests within the discretion of the trial judge,[3] provided that he may not arbitrarily refuse to order particulars necessary to the ade-

15. The tax was held invalid even though the goods were essential to current operational needs, viz., "to insure the fulfillment of its contracts . . . to supply said papers with the necessary paper to print said newspapers." *Id.* at 24, 167 N.W. at 853.

16. Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534, 563 (1959).

1. LA. CONST. art I, § 10.

2. LA. R.S. 15:235, 288 (1950).

3. State v. Williams, 230 La. 1059, 89 So.2d 898 (1956).

quate and intelligent preparation of the defense.[4] When abuse of discretion is shown on appeal, the conviction will be reversed.[5]

Limitations Upon the Discretion of the Trial Judge

Long Form Indictment

Since the Code of Criminal Procedure requires that the long-form indictment[6] state every fact and circumstance necessary to constitute the offense,[7] a proper long-form indictment usually furnishes the defendant with all the necessary information.[8] However, there may be instances in which information vital to a sound defense is not contained in the indictment; and in such cases, a bill of particulars should be granted. Thus, where the crime is one which can occur at different times or places or in numerous ways, a motion for a bill of particulars should be granted.[9] If there is an indication that the defendant may have committed the offense more than once, he may need to know the occasion on which the state relies not only to prepare his defense but also to enable him to plead former jeopardy at any subsequent prosecution.[10] Also, even when the crime is one that could only be committed at one place and in one way,[11] the defendant

4. State v. Dugan, 229 La. 668, 86 So. 2d 528 (1956).

5. State v. Poe, 214 La. 606, 38 So. 2d 359 (1948) (granting of bill rests in trial judge's discretion; mere refusal not ground for reversal unless prejudice shown); State v. Lewis, 159 La. 109, 105 So. 243 (1925) (same).

6. "Indictment" also refers to bill of information.

7. LA. R.S. 15:227 (1950).

8. State v. Smith, 243 La. 656, 659, 146 So. 2d 152, 153 (1962): The jurisprudential test of the sufficiency of an indictment charged in the long form is "*whether it contains every element of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet*; and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction."

9. State v. Dugan, 229 La. 668, 86 So. 2d 528 (1956). The defendant was charged with possession and sale of marijuana, by a bill of information following the language of the statute. He moved for and was denied a bill of particulars to show the person to whom he had allegedly sold and delivered the drug, and the alleged time and place of the occurrence. On appeal the Supreme Court stated that when an accused is charged under the language of a statute which is so general in its terms that it does not sufficiently inform him of the nature and cause of the accusation, he should be entitled, upon timely request, to such details in a bill of particulars. See also State v. Butler, 229 La. 788, 86 So. 2d 906 (1956).

10. State v. Larocca, 156 La. 567, 100 So. 720 (1924) (person charged with the carnal knowledge of a juvenile entitled to bill specifying place of the commission of the offense by number and street); State v. Rollins, 153 La. 10, 95 So. 264 (1922) (defendant charged with possessing intoxicating liquor for beverage purposes entitled to bill stating time and place of possession and kind and quantity of liquor).

11. State v. Goodson, 116 La. 388, 40 So. 771 (1906); State v. Augusta, 119 La. 896, 7 So. 2d 177 (1942). Both cases indicate that where the crime

relying on an alibi should be able to require the state to furnish him with the alleged time of the offense.[12]

Short-Form Indictment

When the short-form indictment with its simplified form of accusation is used, the problem of fully informing the defendant becomes more acute.[13] Recognizing this problem, the Louisiana jurisprudence has indicated that, although the determination whether to grant the bill remains in the trial judge's discretion, the court must be extremely liberal when the short form is employed.[14] This liberal attitude is compelling since in most

charged is one that could only be committed in one place and generally in one way, an indictment or bill of information following the language of the statute is usually held to be sufficient.

12. Comment, 12 LA. L. REV. 457 (1952). In State v. Copling, 242 La. 199, 205, 135 So. 2d 271, 273 (1961), the court stated that "when time is not of the essence of the crime and the defense is not an alibi, the time stated in the indictment is immaterial." This seems to indicate that if the defendant were relying on an alibi, he could require the state to furnish the time of the offense.

13. A.L.I. CODE OF CRIM. PROC. § 155, at 71, 83 (official draft, 1931). The short, simplified form of indictment which dispensed with the necessity of alleging the particulars of the offense charged was formulated by the American Law Institute. The Institute also recommended that when the short form is used the granting of a bill of particulars at the accused's request should be compulsory in order sufficiently to apprise him of the offense with which he is charged.

14. In State v. Barnes, 242 La. 102, 134 So. 2d 890 (1961), the Supreme Court stated that "while the accused is not entitled to a bill of particulars as a matter of right under these articles, his rights thereunder must be consonant with the rights guaranteed to him under the constitution that 'in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. . . .' Consequently, whenever the short form indictment is used, the accused is entitled, upon timely request, to be furnished with a bill of particulars setting out such matters that are of the essence of the charge against him and not included in the indictment and any other facts that are necessary for him to properly and intelligently prepare his defense." *Id.* at 110, 134 So. 2d at 893. See also State v. Leming, 217 La. 257, 45 So. 2d 262 (1950); State v. Masino, 214 La. 744, 38 So. 2d 622 (1949); State v. Bessar, 213 La. 299, 34 So. 2d 785 (1948); State v. Chanet, 209 La. 410, 24 So. 2d 670 (1946).

In State v. Coleman, 236 La. 629, 108 So. 2d 534 (1959), the defendant was charged with negligent homicide by use of the short-form indictment which stated, in substance, that the defendant "negligently killed Mrs. Helen Bridges Hyde, in violation of article 32 of the Louisiana Criminal Code." The defendant contended that the indictment did not inform him sufficiently of the nature and circumstances of the accusation because there are many ways in which a person could be negligently killed by another and many different instrumentalities which could be used in such killing. The Supreme Court, in allowing the defendant to obtain the information sought, stated that "if the defendant desired additional information as to the details of the charge for the preparation of his defense, *he was entitled as a matter of right to be furnished with a bill of particulars.*" (Emphasis added.) *Id.* at 634, 108 So. 2d at 536.

In State v. Brooks, 173 La. 9, 136 So. 71 (1931), the defendant had been indicted under the short form for embezzlement and sought a bill of particulars to determine the ownership of the property, and the specific relationship of the accused to the owner of the money. The court, in holding the defendant entitled

instances the short-form indictment would not adequately inform the defendant of the charge against him.

Limitation Upon the Information Defendant May Demand

When the defendant is found to be entitled to a bill of particulars, there must be certain practical limits as to what he can demand. Although he is entitled to information absolutely necessary for the preparation of his defense, the defendant may not use the bill of particulars as a discovery device to obtain a preview of the state's evidence.[15] The distinction seems to be

to this information, stated that "the purpose of permitting a bill of particulars where a short form of indictment is used is to fully protect the accused, indicted under such form, in his constitutional right to be informed of the nature and cause of the accusation against him, and for this reason the provision as to a bill of particulars, where short forms of indictment are used, should be liberally interpreted." *Id.* at 15, 136 So. at 73.

15. A. Louisiana courts have compelled the district attorney to inform the defendant as to the approximate time and place of the alleged crime. State v. Howard, 243 La. 971, 149 So. 2d 409 (1963); State v. Butler, 229 La. 788, 86 So. 2d 906 (1956); State v. Dugan, 229 La. 668, 86 So. 2d 528 (1956); State v. Bessar, 213 La. 299, 34 So. 2d 785 (1948); State v. Chanet, 209 La. 410, 24 So. 2d 670 (1946); State v. Larocca, 156 La. 567, 100 So. 720 (1924).

B. General information as to the circumstances of the alleged crime is usually required. The state has been required to furnish such information as the following:

1. Defendant indicted for negligent homicide requested information as to the cause of death of the alleged victim. The state's answer, "that the death was the result of an explosion, the cause thereof being the alleged negligent acts of the defendant," was held sufficient (State v. Masino, 214 La. 744, 38 So. 2d 622 (1949));

2. Defendant charged with simple burglary was entitled to be informed as to "whether or not the intent of the accused was to commit a forcible felony or a theft, and if a forcible felony, the nature of it" (State v. Holmes, 223 La. 397, 65 So. 2d 890 (1953));

3. Defendant indicted for theft was entitled to be informed "whether the theft was committed with the consent of the owner or accomplished by means of fraudulent conduct, practices or misrepresentations, and if accomplished without the consent of the owner, the nature and manner in which the appropriation was accomplished" (State v. Barnes, 242 La. 102, 134 So. 890 (1961). See also State v. Picou, 236 La. 421, 107 So. 2d 691 (1958); State v. Gould, 155 La. 639, 99 So. 490 (1924));

4. Defendant indicted for possession and sale of marijuana was entitled to know the person to whom the alleged sale was made (State v. Butler, 229 La. 788, 86 So. 2d 906 (1956); State v. Dugan, 229 La. 668, 86 So. 2d 528 (1956));

C. Particulars were denied in the following cases:

1. In State v. Poe, 214 La. 606, 38 So. 2d 359 (1948), two defendants charged with the crime of attempted kidnapping were denied particulars as to the manner in which they allegedly attempted to seize the prosecutrix, the means or mode by which they attempted to carry her, the part taken by each defendant in the perpetration of the alleged offense, and the steps taken by each or either to effect the attempt.

2. In State v. Garrison, 244 La. 787, 154 So. 2d 400 (1963), the defendant, who was charged with the offense of defamation, requested in his application for a bill of particulars to be informed as to the exact words, phrases, and sentences in the November second statement which the state contended

drawn between general facts indicating *what* the state intends to prove, and details revealing *how* the state intends to prove the accusation. The Supreme Court relies heavily on the trial judge's determination of the category into which defendant's request falls and will seldom reverse his decision. This is sound for the distinction is largely one of degree which is difficult to evaluate on a cold record.[16]

The defendant cannot use the bill of particulars as a dilatory device by requesting information which would be immaterial and useless in preparation of the defense. Thus in *State v. Copling*[17] the court refused to furnish a bill giving the specific dates upon which promises, threats, or schemes were made by the defendant to entice minor females into prostitution since time was not an essential element of the crime and the defense was not relying on an alibi.[18]

The Louisiana jurisprudence also indicates that the defendant cannot use the bill of particulars to force the state to choose in advance between responsive verdicts[19] or between permissible alternate lines of proof of the crime charged.[20]

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was defamatory or untrue.

3. In State v. Scott, 237 La. 71, 110 So. 2d 530 (1959), defendant was charged with aggravated rape and requested information as to the circumstances and facts surrounding the commission of the offense, manner of the acts by either the defendant or complainant in the commission of the offense, and whether it took place inside a room or at some definite location outside. See also State v. Michel, 225 La. 1040, 74 So. 2d 207 (1954); State v. Simpson, 216 La. 212, 43 So. 2d 585 (1949); State v. Fernandez, 157 La. 149, 102 So. 186 (1924).

16. However, in State v. Leming, 217 La. 257, 46 So. 2d 262 (1950), an accused indicted by the short form for murder was held to be entitled to information not only as to the cause of death, which was poison, but also to be furnished with the chemical analysis report that the state had in its possession. The chemical analysis report would appear to fall in the category of state's evidence.

17. 242 La. 199, 135 So. 2d 271 (1961). See also State v. Johnson, 228 La. 317, 82 So. 2d 24 (1955); State v. Roshto, 169 La. 251, 125 So. 67 (1929); State v. Gremillion, 137 La. 291, 68 So. 615 (1915); State v. Anderson, 125 La. 779, 51 So. 846 (1910).

18. Other courts have held immaterial to the defense such information as: (1) type of heroin with which the defendant allegedly dealt. State v. Matassa, 222 La. 363, 62 So. 2d 609 (1952); (2) exact hour and place in the parish where intoxicating liquor was allegedly sold, quantity of intoxicating liquor sold and the name of the purchaser. State v. McCall, 162 La. 471, 110 So. 723 (1926); (3) exact date and hour that the defendant allegedly committed the offense of contributing to the delinquency of a minor. State v. Alford, 206 La. 100, 18 So. 2d 666 (1944).

19. State v. Iseringhausen, 204 La. 593, 16 So. 2d 65 (1943).

20. State v. Prince, 216 La. 989, 45 So. 2d 366 (1950); *The Work of the Louisiana Supreme Court for the 1959-1960 Term — Criminal Procedure*, 11 LA. L. REV. 233 (1951). Defendant was charged with attempted aggravated rape, and the proof was such that a jury might have found either resistance

Time for Filing Motion for Bill of Particulars

The Louisiana Code of Criminal Procedure provides that the defendant has a right to file a motion for a bill of particulars "prior to arraignment,"[21] and that the judge cannot entertain such a motion after the trial has started.[22] Although there is no direct statutory authorization for the granting of a bill of particulars after arrignment but before trial, the jurisprudence indicates that the judge may and often should allow the motion during that interval.[23]

In *State v. Barnes*[24] the defendant, who was indicted under the short form for theft, moved to withdraw his plea of not guilty in order to file a bill of particulars. The motion was filed after arraignment and five days before trial. The trial judge refused the request, stating that the motion was filed "too late." On appeal, the Supreme Court found "that in refusing to allow the defendant to withdraw his plea of not guilty in order to file a motion for a bill of particulars for the sole reason that it was 'too late' in that it was filed after the arraignment was clearly arbitrary and an abuse of discretion." The court further stated that when the short-form indictment is used the accused is entitled to a bill of particulars upon "timely request." The court, however, did not specifically spell out when a motion is timely. It would appear that the court was attempting to safeguard the defendant's constitutional right, but was also guarding against a motion for a bill of particulars so near trial that it was clearly for dilatory purposes. Under *Barnes,* therefore, a motion for a bill of particulars after arraignment is not necessarily untimely; and in order for the trial judge to deny the motion, he must find that it was a dilatory tactic or otherwise unsound in addition to being late.

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to the utmost (LA. R.S. 14:42(1) (1950)), or compliance as a result of threats (LA. R.S. 14:42(2) (1950)). The bill of particulars asked which one the state was going to attempt to prove, and the state replied that the prosecution was under both clauses (1) and (2) of article 42 of the Louisiana Criminal Code. The Supreme Court upheld this by saying that the state did not have to choose in advance, and so long as the state alleged them in the conjunctive, it could prove both. Support can be drawn for this from article 222 of the Louisiana Code of Criminal Procedure which allows charging of disjunctive crimes in one count if alternatives are charged in the conjunctive.

21. LA. R.S. 15:235 (1950).

22. *Id.* 15:288.

23. State v. Barnes, 242 La. 102, 134 So. 2d 890 (1961); State v. Brooks, 173 La. 9, 136 So. 71 (1931); *The Work of the Louisiana Appellate Courts for the 1961-1962 Term—Criminal Procedure,* 23 LA. L. REV. 401 (1963); Note, 22 LA. L. REV. 676 (1962).

24. 242 La. 102, 134 So. 2d 890 (1961).

The proposed revision of the Code of Criminal Procedure being prepared by the Louisiana Law Institute conforms with the *Barnes* principle that the defendant's right to a bill of particulars must be fully safeguarded. It gives the defendant a right to request a bill of particulars "before trial or within ten days after arraignment, whichever is earlier," and further provides that "after the expiration of the ten day period the court may permit the filing of such motion until the commencement of trial."[25] By giving the defendant the right to request a bill of particulars for a specified and reasonable time after the arraignment, the Supreme Court will have more assurance that the trial court did not abuse its discretion in denying a delayed motion on the grounds that it was dilatory in nature; but the rule of the *Barnes* case should still require the trial judge to assign his reason for denying a motion after the ten-day period.

David L. French

DONATIONS — CAPACITY OF UNITED STATES GOVERNMENT TO ACCEPT DONATIONS MORTIS CAUSA UNDER LOUISIANA LAW

Decedent, a Louisiana domiciliary with no forced heirs, bequeathed all his property to the National Institutes of Health, Public Health Service, for research into the cure and prevention of chronic spastic constipation. Decedent's nephew alleged he was the sole heir and brought suit to invalidate the testamentary disposition and to obtain an order to distribute the property in accordance with the law of intestate succession.[1] The district court held the will valid, and plaintiff appealed. The Fourth Circuit Court of Appeal reversed. *Held,* the United States government, its agencies and subdivisions are not considered "persons" within the meaning of Louisiana Civil Code article 1470,[2] and are therefore incapable of receiving a donation mortis causa

25. LOUISIANA STATE LAW INSTITUTE, EXPOSÉ DES MOTIFS no. 12, *Indictment and Information* tit. XII, art. 24 (March 16, 1962).

1. LA. CIVIL CODE art. 1096 (1870): "A succession is called intestate when the deceased has left no will or when his will has been revoked or annulled as irregular.

"Therefore the heirs to whom a succession has fallen by the effects of law only, are called heirs *ab intestato.*"

2. *Id.* art. 1470: "All persons may dispose or receive by donation *inter vivos* or *mortis causa,* except such as the law expressly declares incapable."